BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KENNETH L. MOSS	)	
Claimant	)	
VS.	)	
	)	Docket No. 253,288
AMERICAN LAMINATES, INC.	)	
Respondent	)	
AND	)	
	)	
HARTFORD ACCIDENT & INDEMNITY AND	)	
ULICO CASUALTY COMPANY	)	
Insurance Carriers	)	

ORDER

Respondent and Hartford Accident & Indemnity appealed the June 8, 2000 preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

This is a claim for a November 6, 1997 accident and resulting injury to the left ankle. Citing *Pyeatt*,[1] Judge Foerschler determined that claimant's failure to serve written claim upon the respondent before January 11, 2000, should not preclude claimant from receiving medical treatment for his ankle from Hartford Accident & Indemnity (Hartford).

Respondent and Hartford contend Judge Foerschler erred. They argue that claimant failed to provide respondent with timely written claim as more than 200 days had allegedly expired between the date written claim was served upon respondent and the last date that respondent and Hartford paid medical bills before claimant sought additional treatment in September 1999. Claimant, who is pro se, did not file a brief or letter with the Appeals Board for purposes of this review and, therefore, the Board is without claimant's specific contentions regarding the written claim issue.

The only issue before the Appeals Board on this review is whether claimant served timely written claim upon respondent.

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[1] *Pyeatt v. Roadway Express, Inc.*, 243 Kan. 200, 756 P.2d 438 (1988).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed but for reasons other than *Pyeatt*.

2. On November 6, 1997, claimant injured his left ankle while working for respondent. Respondent and Hartford provided claimant with medical treatment from Industrial Medical Centers, Inc., and later from Occupational Health Centers. Both clinics released claimant from treatment despite his complaints of ongoing pain and discomfort.

3. At claimant's final appointment with Occupational Health Centers on February 24, 1998, claimant was instructed to continue a home exercise and strengthening program and told that it was probably just a matter of time until he could do full stress and high impact activities on his left ankle.

4. Following the release from Occupational Health Centers, claimant's condition did not improve. Therefore, in September 1999, claimant requested respondent to provide additional medical treatment.

5. On January 11, 2000, claimant provided respondent with a preprinted claim form. Claimant retained the preprinted receipt.

6. The last medical bill paid by Hartford for the medical treatment provided through February 1998 by either Industrial Medical Centers, Inc., or Occupational Health Centers was made on April 29, 1998. In July 1999, Ulico Casualty Company replaced Hartford as respondent's workers compensation carrier.

7. The Workers Compensation Act provides that an injured worker must serve written claim for compensation upon an employer within 200 days after the date of accident or within 200 days after the date of last payment of compensation, whichever is later.[2] But once an authorized course of treatment has begun, the time for making written claim for compensation does not commence until the employer advises the worker that medical benefits are being discontinued.

> Where the employer and insurance carrier have once authorized a course of treatment for a workman they cannot effect a "suspension" of such compensation, and start the workman's claim time running under K.S.A. 1972 Supp. 44-520a, merely by failing to pay the medical bills as they are received. At least where the respondents are on notice that the workman is seeking additional treatment on the assumption that he is still covered they

[2] K.S.A. 44-520a(a).

> are under a positive duty to disabuse him of that assumption if they intend to rely on the 200 day statute.[3]

8. Claimant believed the doctor's statement that the ankle would heal with time. Claimant was not advised that the right to seek additional medical treatment was being discontinued. Claimant did not abandon treatment but merely followed the authorized doctor's instructions to continue treatment at home and allow time to heal his ankle. Under these facts, the Appeals Board concludes that claimant's medical treatment was not complete and that respondent and Hartford were obligated to advise claimant that they were terminating claimant's right to seek medical treatment for his ankle before the time for making written claim commenced. Because the time for making written claim did not commence, the January 11, 2000 written claim was timely.

WHEREFORE, the Appeals Board affirms the June 8, 2000 preliminary hearing Order entered by Judge Foerschler.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

c: Kenneth L. Moss, 4941 NW Gateway, #9, Riverside, MO, 64150
Heather Nye, Kansas City, MO
Kristine A. Purvis, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

[3] *Blake v. Hutchinson Manufacturing Co.*, 213 Kan. 511, syl. ¶ 3, 516 P.2d 1008 (1973).